87-1927

SUPREME COURT, U.S.
FILED
MAY 23 1988
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

DOROTHY ANN KNOX and
KIMBERLY LAWANDA WARE,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
NOS. 85-5952, 86-5089 and 86-5097

****

PETITION FOR WRIT OF CERTIORARI

****

KIRKPATRICK, KIRKPATRICK & EFIRD
WILLIAM P. EFIRD
#2900, 100 N. Main Bldg.
Memphis, TN 38103
(901) 523-2161
COUNSEL FOR DOROTHY ANN KNOX

IRVIN M. SALKY
707 Adams Avenue
Memphis, TN 38105
(901) 525-8601
COUNSEL FOR KIMBERLY LAWANDA WARE

QUESTIONS PRESENTED FOR REVIEW

I. Whether the Court committed error in denying the Defendants' motion to suppress because:

(a) The Defendants were seized without a reasonable or articulable suspicion that Defendants were engaged in criminal activity.

(b) The scope of the seizure (removing the Defendants from a public place in the airport to separate security rooms for custodial interrogation) exceeded the limits of an investigatory field stop.

(c) The duration of the seizure (approximately thirty minutes) exceeded the permissible limits for an investigatory field stop.

All of the above violating the Defendants' rights guaranteed by the

Fourth Amendment of the Constitution of the United States.

II. Whether the Court erred in denying the Defendants' motion to suppress on the basis that the Defendants had abandoned the unisex bag in which drugs were found by stating that they did not own the bag and, if so, whether said abandonment was tainted by the unlawful seizure of the Defendants, and interrogation without Miranda warnings, all in violation of the rights guaranteed by the Fourth and Fifth Amendments of the Constitution of the United States.

III. Whether the Court erred by denying the Defendants' motion to suppress the oral statements made by the Defendants while they were seized by agents of the United States without

benefit of Miranda warnings, all in violation of the Fifth Amendment of the Constitution of the United States.

LIST OF PARTIES TO THE PROCEEDING IN THE SIXTH CIRCUIT COURT OF APPEALS

The parties to the proceeding in the Sixth Circuit Court of Appeals were Dorothy Ann Knox, No. 85-5952 and 86-5089, Kimberly LaWanda Ware, No. 86-5907, and Altmonte S. Champegnie, No. 86-5200, Defendants-Appellants, and the United States, Plaintiff-Appellee.

ABBREVIATIONS USED IN THE TEXT

The abbreviation "S.Tr." stands for the Court Reporter's transcript of the proceedings held on the Defendant's motion to suppress on August 30, 1985.

The abbreviation "C.Tr." refers to the Court Reporter's transcript of the bond hearing held for Defendant Champegnie on July 2, 1985.

TABLE OF CONTENTS

Questions Presented i

List of Parties to the Proceedings in the Sixth Circuit Court of Appeals..... iii

Abbreviations Used in the Text..... iv

Table of Authorties..... vii

Opinions Below..... 1

Jurisdiction..... 2

Constitutional and Statutory Provisions..... 3

Statement of the Case..... 4

Statement of the Facts..... 6

Reasons for Granting the Writ

I. A. THE GOVERNMENT LACKED A REASONABLE OR ARTICULABLE SUSPICION UPON SEIZING THE PETITIONERS AND, THEREFORE, THE SEIZURE WAS UNLAWFUL..... 14

B. THE SCOPE OF THE SEIZURE OF THE PETITIONERS, REMOVING THEM FROM THE PUBLIC AREAS OF THE AIRPORT AND SEPARATING THEM INTO THREE ROOMS WITH AN OFFICER AT OR NEAR THE DOOR OF EACH ROOM EXCEEDED THE SCOPE OF AN INVESTIGATORY FIELD STOP..... 16

C. THE LENGTH OF THE SEIZURE (APPROXIMATELY 30 MINUTES) EXCEEDED THE PERMISSIBLE TIME LIMIT FOR AN INVESTIGATORY FIELD STOP..... 18

II. THE PETITIONERS WERE ENTITLED TO MIRANDA WARNINGS PRIOR TO CUSTODIAL INTERROGATION AND THE EXECUTION OF CONSENT TO SEARCH FORMS..... 21

Conclusion..... 27

Appendix A:

Opinion of the Court of Appeals, Sixth Circuit dated February 12, 1988

Appendix B:

Order of the Court of Appeals, Sixth Circuit, Denying Petition for Rehearing, filed March 30, 1988

Appendix C:

Ruling on Motions to Suppress Filed by the United States District Court for the Western District of Tennessee file on September 30, 1985

TABLE OF AUTHORITIES

Constitution of the United States

Amendment IV 3

Amendment V 3

United States Supreme Court Decisions

Arkansas v. Sanders, 422 U.S. 753 (1979)..... 14

Berkemer v. McCarty, 468 U.S. 420 (1983)..... 21,22,23, 25,26

Florida v. Royer, 103 S.CT. 1319 (1983)..... 14,17

Miranda v. Arizona, 384 U.S. 436 (1966)..... 13,14,21, 23,26

Ried v. Georgia, 448 U.S. 438 (1980)..... 14,15,18

U.S. v. Sharpe, 470 U.S. 675 (1985)..... 15,19,20, 21

United States Court of Appeals Decisions

U.S. v. Beraun-Panez, 812 F.2d 578 (9th Cir. 1987)..... 25

U.S. v. Jefferson, 650 F.2d 854 (6th Cir. 1981)..... 15,16

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

DOROTHY ANN KNOX and
KIMBERLY LAWANDA WARE,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
NOS. 85-5952, 86-5089 and 86-5097

****

PETITION FOR WRIT OF CERTIORARI

****

KIRKPATRICK, KIRKPATRICK & EFIRD
WILLIAM P. EFIRD
#2900, 100 N. Main Bldg.
Memphis, TN 38103
(901) 523-2161
COUNSEL FOR DOROTHY ANN KNOX

IRVIN M. SALKY
707 Adams Avenue
Memphis, TN 38105
(901) 525-8601
COUNSEL FOR KIMBERLY LAWANDA WARE

Petitioners, Dorothy Ann Knox and Kimberly LaWanda Ware respectfully petition this Court to issue a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit which opinion was issued February 12, 1988, and which affirms the judgment of the United States District Court for the Western Division, Western District of Tennessee in this cause.

OPINIONS BELOW

The opinion of the Court of Appeals for the Sixth Circuit dated February 12, 1988 is set forth in full in Appendix A hereto. A timely petition for rehearing on behalf of Petitioners Dorothy Ann Knox and Kimberly LaWanda Ware was reviewed by the Court of Appeals in this

case. That petition for rehearing was denied by order dated March 30, 1988. A copy of that order is set forth in full in Appendix B. Accordingly, by Rule 20.4 of the Supreme Court Rules, the instant petition for a writ of certiorari is timely. The opinion of the United States District Court for the Western District of Tennessee denying the Petitioners Motion to Suppress is set forth in full in Appendix C.

JURISDICTION

The jurisdiction of this Court upon this petition for writ of certiorari is invoked pursuant to 28 U.S.C. 1254(1).

The Court of Appeals for the Sixth Circuit denied the Petitioners appeal by opinion dated February 12, 1988, Appendix A hereto.

A timely motion for rehearing was filed and denied by the Court of Appeals for the Sixth Circuit on March 30, 1988.

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, Amendment IV.

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment V.

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment by a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same

offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

The appeal before the United States Sixth Circuit Court of Appeals below as to Defendant Dorothy Ann Knox was from a conditional plea of guilty and reservation of appeal rights pursuant to Rule 11 of the Federal Rules of Criminal Procedure, entered on October 8, 1985 in the Western District of Tennessee. The appeal of Kimberly LaWanda Ware was from a conviction rendered by a jury on October 10, 1985 in the United States District Court for the Western District of Tennessee, Western Division, the Honorable Robert McRae, Judge, presiding.

The Petitioners were charged in a one count indictment in the United States District Court for the Western District of Tennessee and convicted of the violation of possession with intent to distribute a schedule II controlled substance (cocaine) and aiding and abetting in the same in violation of Title 21 U.S.C. §841(a)(1). All of the cases were tried in the District Court under docket number 85-20121-M. Petitioner Knox was sentenced to two years incarceration with three years special parole term to follow on December 13, 1985. Petitioner Ware was sentenced on December 13, 1985 to a sentence of three years incarceration with three years of special parole to follow. The Petitioners timely filed notices of appeal and the case was docketed and

heard by the United States Sixth Circuit as docket numbers 85-5952, 86-5089 and 86-5097.

STATEMENT OF THE FACTS

On the morning of June 14, 1985, Special Agent Richard Holmes of the Drug Enforcement Administration (DEA), Memphis, Tennessee office, received a telephone call from DEA agent Paul Markonni of the Atlanta, Georgia DEA office who was assigned to the Atlanta Airport. Agent Markonni advised agent Holmes that he had observed one black male and two black females (later identified as the original three defendants) when they exited an airplane arriving from Miami, Florida enroute to Memphis. Agent Markonni reported that he noticed one of the females (Ware) holding one of her arms across her abdomen, as if she

were holding something and rush into the bathroom. He also reported that he noticed that they had initially acted like they didn't know each other, but later he observed the three talking with each other. Agent Markonni also checked with their airline and learned that each reservation had been made at the same time the previous day, and that the tickets had been purchased with cash. He also checked a "call-back" telephone number in Miami that had been given to the airline by the person who made the reservations, and discovered that the person answering the phone at that number did not know any of the defendants (Richard Holmes at S.Tr. 13-14).

After this information was relayed to agent Holmes in Memphis, he and other local officers were waiting at the

Memphis Airport for the defendants' flight to arrive from Atlanta. As they disembarked at the gate area located on the second level of the airport, Holmes saw Ware hand a blue travel bag (unisex bag) she was carrying to Knox. He then approached the defendants, identified himself, showed them his DEA badge, and asked them to accompany him and the other officers (four or five in number) to another location in the lower level of the airport that was the office of Airport Security. However, prior to proceeding there, agent Holmes asked the female defendants if he could "assist" them in carrying their bags. He was given the blue unisex travel bag (wherein approximately one kilogram of cocaine was later found), by Knox or someone, and he carried it downstairs to

the baggage claim area, accompanied by the three defendants and the other officers. After retrieving the defendants' luggage and Champegnie's briefcase, they all proceeded to the Airport Security Office. The defendants were separated and placed into three small interrogation rooms. An officer stood at or near the door to each room. The defendants' respective pieces of luggage were placed in each one's respective small room. The blue travel bag referred to above was removed and set outside Ware's room (Richard Holmes at C.Tr. 6; Richard Holmes at S.Tr. 47, 51-52, 54-57, 63, 91, 113, 114). The defendants were not removed to the private area for security purposes. The officer had no reason to assume that they had weapons (S.Tr. 102, 103).

In addition, agent Holmes had earlier (before he went to the Memphis Airport) arranged to have a police officer with a dog trained to respond to contraband drugs meet him at the airport (Richard Holmes at S.Tr. 16-17).

Agent Holmes had targeted these defendants as the objects of a criminal investigation (S.Tr. 15-17). As a federal law enforcement officer he was conducting an investigation into possible violations of federal criminal statutes, particularly those relating to Title 21, United States Code. As part and parcel of that investigation, while the defendants were separated from each other and the public, Holmes interrogated each of them (S.Tr. 19-21). Going from closed room to closed room, from putative defendant to putative defendant, he

interrogated them. He started with Champegnie, then Knox and on to Ware. According to Holmes, each defendant at first denied knowing the other, then later acknowledged that they did. However, not until after the cocaine was found in the blue unisex bag, and after the defendants were officially "placed under arrest", were any of them advised of their Miranda warnings. (Richard Holmes at C.Tr. 4-5; Richard Holmes at S.Tr. 18-19, 54-55, 65-67, 79).

Before he searched defendants' luggage including Champegnie's briefcase and before he obtained a signed "Consent to Search" form from each of them, while they were sequestered and being questioned, Holmes unzipped the blue unisex travel bag situated just outside Ware's room, and had the trained police

dog go over the defendants' luggage in their presence. The dog responded positively for cocaine when it went over the various pieces of luggage. (Richard Holmes at S.Tr. 18-20, 61-62, 72.) Thereafter a full "consensual" search took place (S.Tr. 21-25). Cocaine was found in the blue bag.

The defendants were never told that they were free to leave nor were they told they were under arrest until after the cocaine was found (S.Tr. 54).

REASONS FOR GRANTING THE WRIT

The case involves important questions of federal law in the interpretation of both the Fourth and Fifth Amendments to the United States Constitution which have not been completely settled by this Court and

upon every issue, the United States Sixth Circuit Court of Appeals decided the federal questions in a way that is in conflict with the applicable decisions of this Honorable Court.

The government's entire case was based upoon the seizure of approximately one kilogram of cocaine from a unisex bag carried by the defendants at the Memphis International Airport. The cocaine was seized after an unlawful seizure of these defendants, an unlawful search and after the defendants were in custody, and not warned of their constitu tional rights as required by Miranda v. Arizona, 384 U.S. 436 (1966). The defendants' statements, consent to search and resulting search and seizure of the cocaine being the product of unlawful seizure, search and

interrogation should have been suppressed by the District Court. Arkansas v. Sanders, 422 U.S. 753 (1979); Miranda v. Arizona, 384 U.S. 436 (1966).

I

A. THE GOVERNMENT LACKED A REASONABLE OR ARTICULABLE SUSPICION UPON SEIZING THE PETITIONERS AND, THEREFORE, THE SEIZURE WAS UNLAWFUL.

The trial court and United States Sixth Circuit Court of Appeals correctly found that upon the Petitioners being approached by the government agents upon deplaning in Memphis, that a reasonable person would not have believed that they were free to leave and, therefore, they were seized within the meaning of the Fourth Amendment of the Constitution of the United States. Florida v. Royer, 103 S.Ct. 1319 (1983); Reid v. Georgia,

448 U.S. 438 (1980); U.S. v. Jefferson, 650 F.2d 854 (6th Cir. 1981). The government justifies the seizure of the persons on the basis that the officers possessed a reasonable or articulable suspicion that criminal activity was afoot and that an investigatory field stop was proper under the circumstances. U.S. v. Sharpe, 470 U.S. 675 (1985). In the present case, the government asserts that the stop is justified because Petitioner Ware held her arm across her stomach when deplaning in Atlanta, the tickets were purchased with cash shortly before the flight, an incorrect callback number was given to the airline and the Petitioners were traveling together while attempting to give the appearance that they were not traveling together. In Reid v. Georgia, 448 U.S. 438 (1980),

this Honorable Court found that as a matter of law the defendant who was traveling on a short trip from a source city in the early morning hours with a companion and attempting to conceal the fact that he had a companion and neither carrying any luggage, except identical shoulder bags, did not establish sufficient facts for the agents to have reasonably suspected the defendant of criminal activity. To the same effect is U.S. v. Jefferson, 650 F.2d 854 (6th Cir. 1981). In the present case there simply were not sufficient facts to establish anything beyond mere suspicion and, therefore, the seizure was unlawful and all evidence secured thereafter should have been suppressed.

B. THE SCOPE OF THE SEIZURE OF THE PETITIONERS, REMOVING THEM FROM THE PUBLIC AREAS OF THE AIRPORT AND

SEPARATING THEM INTO THREE ROOMS WITH AN OFFICER AT OR NEAR THE DOOR OF EACH ROOM EXCEEDED THE SCOPE OF AN INVESTIGATORY FIELD STOP.

In Florida v. Royer, 103 S.Ct. 1319 (1983), the government had a reasonable or articulable suspicion to temporarily stop and question the defendant at the airport. However, when the defendant was removed from the public areas of the airport to a private room for interrogation in the investigation of his private effects this Court held that the removal exceeded the permissible scope of an investigatory field stop. The present case is identical to Florida v. Royer, 103 S.Ct. 1319 (1983), in that the defendants were immediately upon being approached by the DEA taken from the public areas to private interrogation rooms. In addition, the government did

not attempt to justify the removal of the Petitioners from the public areas on the basis of security. On the contrary, there were no security reasons for removing the Petitioners from the public areas (S.Tr. 102, 103). Therefore, the removal of the Petitioners from the public areas and separating them into individual rooms far exceeded the scope of an investigatory field stop and all subsequent evidence seized was the product of the unlawful search and seizure and should have been suppressed. Reid v. Georgia, 448 U.S. 438 (1980).

C. THE LENGTH OF THE SEIZURE (APPROXIMATELY 30 MINUTES) EXCEEDED THE PERMISSIBLE TIME LIMIT FOR AN INVESTIGATORY FIELD STOP.

The time from the initial seizure of the Petitioners until the drugs were found was estimated between ten and

thirty minutes by Agent Holmes. The trial court made no specific factual finding as to the length of the detention. However, since the government has the burden of proof in justifying a warrantless seizure and search, the inference must be drawn unfavorable to the government that the detention was, in fact, thirty minutes. In assessing the validity of the length of a detention the relevant inquiry is whether the police acted diligently and pursued a means of investigation that was likely to confirm or dispell their suspicions quickly. U.S. v. Sharpe, 470 U.S. 675 (1985).

> "A Court making the assessment should take care to consider whether the police were acting in a swiftly developing situation and in such cases

> the Court should not indulge in unrealistic second guessing...." U.S. v. Sharpe, 470 U.S. 675, 686-687 (1985).

In the present case, there existed no swiftly developing situation. Agent Holmes had been notified well in advance of the suspects flight and arrival time in Memphis and Agent Holmes was in the airport with numerous local law enforcement agents and had already contacted and had available the metro narcotics drug sniffing dog. The government was in total control of the situation at all times. The Petitioners did not flee, as did the defendants in U.S. v. Sharpe, supra. The lengthy delay in this matter resulted from the desire of the government to remove the Petitioners from the public areas and to conduct custodial interrogations. Therefore, the duration

of the detention of these Petitioners far exceeded the scope for an investigatory field stop and all of the evidence should have been suppressed.

U.S. v. Sharpe, 470 U.S. 675 (1985).

II

THE PETITIONERS WERE ENTITLED TO MIRANDA WARNINGS PRIOR TO CUSTODIAL INTERROGATION AND THE EXECUTION OF CONSENT TO SEARCH FORMS.

Berkemer v. McCarty, 468 U.S. 420 (1983), set forth the test for determining when Miranda rights must be given to a suspect in an investigatory field stop. The Miranda (Miranda v. Arizona, 384 U.S. 436 (1966) rights must be given when a person is deprived of his freedom of action to a degree associated with formal arrest. The issue was "whether a traffic stop exerts upon a detained per-

son pressures that sufficiently impair his free exercise of his privilege against self-discrimination to require that he be warned of his constitutional rights." Berkemer v. McCarty, 468 U.S. 420, 437 (1983). The U.S. Supreme Court held that a detention of a motorist on a public highway did not amount to such an encounter because two factors were present. First, the stop would be brief, lasting only a few minutes and this would be known by the motorist who would realize that the most that would probably occur to him would be a traffic citation. The Court contrasted that situation to the station house interrogation where the detainee would be aware that the questioning would continue until the interrogators received the answers they sought. Berkemer v.

McCarty, 468 U.S. 438, citing Miranda v. Arizona, 384 U.S. at 451. In the present case, the Defendants were taken from the public area to private interrogation rooms and separated from their companions. Certainly the DEA intended to ask more than "just a few questions." "Just a few questions" could have been asked in the public corridor after the Defendants deplaned.

The second basis of the decision in Berkemer v. McCarty, supra, was that the circumstances associated with the typical traffic stop were not such that the motorist felt completely at the mercy of the police. Berkemer v. McCarty, 468 U.S., 420, 438 (1983). The Court noted that the motorist was in a public area, there were witnesses from both pedestrians and persons in cars and that

the exposure to public view reduced the likelihood of incriminating statements. The Court further held that Miranda warnings were not required because the detained motorist was confronted by one or at the most two policemen, which further lessened his sense of vulnerability, holding that the traffic stop was not a "police dominated" situation. In the present case, the Defendants were met by numerous law enforcement officers, taken from the public area to private police dominated interrogation rooms. Of importance is that the Defendants did not go get their baggage on their own, but had requested the permission of the DEA to do so, and were accompanied and assisted by the officers in retrieving their baggage. The only reasonable and logical conclu-

sion that can be drawn from this occurrence is that the Defendants were under the control and direction of the officers. Clearly, Miranda warnings were required.

In U.S. v. Beraun-Panez, 812 F.2d 578 (9th Cir. 1987), an individual was interrogated by two law enforcement officers on the side of the road in an area where the suspect was working and with which he was well familiar. The Ninth Circuit, relying upon Berkemer v. McCarty, 468 U.S., 420 (1983), noted that of great significance was whether the interrogation was conducted in public or in private. In holding that the suspect was in custody for the purposes of Miranda the Court noted that the interrogation, while on a public road in a remote area where no passerby would likely be present. The Court

further noted that the suspect's co-worker was not permitted to approach the Defendant during the questioning. The Ninth Circuit held that the Defendant was clearly in custody as he was interrogated essentially in private and was separated from his companions, thus creating the police dominated atmosphere which was prohibited in Miranda and Berkemer v. McCarty, supra. The exact same situation exists in the present case. The Defendants were taken from a public area, placed in private interrogation rooms and separated from their companions. The conclusion that the Defendants reasonably believed that they could not leave and were in a police dominated atmosphere and in custody is inescapeable and, therefore, the rule of Miranda v. Arizona, 384 U.S. 436 (1966)

applies and all of the evidence of the government must be suppressed.

CONCLUSION

For the reasons stated above, the writ of certiorari should be granted and the Court should review and decide the issues and the judgment of the United States Sixth Circuit Court of Appeals should be reversed.

Respectfully submitted,

Dated: April 27, 1988

BY: _____

WILLIAM P. EFIRD
KIRKPATRICK, KIRKPATRICK & EFIRD
Attorney for Dorothy Ann Knox
#2900, 100 N. Main Building
Memphis, TN 38103
(901) 523-2161

BY: _____

IRVIN M. SALKY
Attorney for Kimberly LaWanda Ware
707 Adams Avenue
Memphis, TN 38105
(901) 525-8601

APPENDIX A

RECOMMENDED FOR FULL TEXT PUBLICATION

See, Sixth Circuit Rule 24

NOS. 85-5952, 86-5089, 86-5097, 86-5200

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	ON APPEAL
v.	)	from the
	)	United States
DOROTHY ANN KNOX,	)	District
(85-5952, 86-5089),	)	Court for the
KIMBERLY LAWANDA	)	Western
WARE (86-5097),	)	District of
ALTAMONT S. CHAMPEGNIE	)	Tennessee
(86-5200),	)	
	)	
Defendants-Appellants.		

Decided and Filed February 12, 1988

Before: JONES and GUY, Circuit Judges;
EDWARDS, Senior Circuit Judge.

GUY, Circuit Judge, delivered the opinion of the court, in which JONES, Circuit Judge, joined. JONES, Circuit Judge, (pp. 19-25) also delivered a separate concurring opinion. EDWARDS, Senior Circuit Judge, (pp. 26-31 delivered a separate dissenting opinion.

GUY, Circuit Judge. A one-count indictment was returned against appellants Knox, Ware, and Champegnie charging them with aiding and abetting one another in the possession with intent to distribute a Schedule II controlled substance (cocaine), in violation of 21 U.S.C. §841(a)(1) and 18 U.S.C. §2. The charges arose out of defendants' arrest at the Memphis airport following the discovery of the cocaine in one of the bags in their possession. All three defendants moved

to suppress the evidence and a full evidentiary hearing was conducted by the district court. Testimony was given by the arresting officer at the hearing; all three defendants elected not to testify. The district court denied defendants' suppression motions, finding that, although a seizure had occurred, it constituted a permissible investigatory detention based on a reasonable and articulable suspicion that defendants were engaged in criminal activity. The district court also found that none of the defendants had standing to challenge the search of the bag containing the cocaine, since both Ware and Knox had specifically disclaimed ownership of the bag and, therefore, none of the appellants had exhibited a legitimate expectation of privacy as to its contents.

Following this rule, defendant Knox entered a conditional guilty plea pursuant to Fed. R. Crim. P. 11. Ware and Champegnie were tried and convicted in a subsequent jury trial. Defendants allege that the district judge erred in:

1) denying the motion to suppress;

2) failing to suppress oral statements made by defendants during questioning;

3) holding the defendants had abandoned the bag in which the cocaine was discovered and therefore lacked standing to contest its search; and

4) denying defendant Champegnie's motion for judgment of acquittal at the close of the government's case.

Finding no error, we affirm.

I.

On June 14, 1985, Memphis DEA Agent Richard Holmes received a telephone call from Special Agent Paul Markonni of the Atlanta, Georgia, office of the DEA. Markonni informed Agent Holmes that he had observed three individuals en route to Memphis who had acted suspiciously during a stopover at the Atlanta airport. Markonni had noticed that the three individuals, later identified as the defendants, appeared not to know each other as they exited the plan, which had just arrived in Atlanta from Miami, Florida. Markonni observed defendant Ware holding her stomach as she left the plane and rushed to an airport restroom. He also reported that defendant Champegnie had initially acted as if he did not know Ware or Knox,

although later the three were observed talking together. Markonni checked with the airline and discovered that each reservation had been made at the same time on the previous day and that all three one-way tickets had been purchased with cash. Upon dialing the Miami call-back number given to the reservations agent, Markonni found that the person at that number did not know any of the persons listed on the reservations.[1]

Upon receipt of this information, Agent Holmes, a thirteen-year veteran with the DEA who had extensive experience working airport detail, became suspicious that the three indivi-

---

[1]Upon subsequent detention for questioning by Agent Holmes, Altamont Champegnie gave his real name, although his airline ticket indicated that his name was A. Stanford.

duals described by Agent Markonni were engaged in drug smuggling. He requested assistance from Memphis Metro Narcotics, including a specially trained "drug sniffing" dog, and arranged to meet with the officer at the Memphis airport. When defendants deplaned, they looked around and appeared not to know each other. Ware was carrying a blue travel bag which she subsequently handed to Knox just outside the gate area. At this point, Holmes approached the trio, identified himself as a DEA agent, and asked if they would accompany him downstairs to the airport security office. Defendants agreed but requested that they pick up their luggage first. Holmes asked Knox and Ware if he could assist them with their bags, whereupon Knox handed him the blue travel bag.

Defendants were placed in separate rooms in the vicinity of the security office, along with their luggage. Each defendant was then questioned separately; each initially denied knowing the other two. Both Champegnie and Knox stated that they had lost their airline tickets; however, when asked for her ticked, Ware pulled several tickets from her purse. Holmes asked to see them and Ware acquiesced; they were listed in the names of Kim Ware, Dorothy Knox, and A. Stanford (the name under which defendant Champegnie was traveling). As Holmes testified at the suppression hearing, although they had not specifically been told that they could leave at any time, they had been informed that they were not under arrest and that Holmes "just wanted to question them."

Once Champegnie and Knox discovered that Holmes had seen the tickets, they acknowledged that they knew each other, although Champegnie first represented that he had only met Knox and Ware ont he plane and, shortly thereafter, stated that he had known them for a couple of months. Holmes then asked each defendant if they would consent to a search of their luggage. The dog from the Metro Narcotics unit was brought to the area and reacted positively for drugs as to all pieces of defendants' luggage. Defendants then signed consent forms for the search, although both Knox and Ware denied ownership or control of the blue travel bag. The search yielded approximately one kilogram of cocaine, found in the blue travel bag, as well as a book on cocaine processing entitled The

Cocaine Handbook, found in Champegnie's briefcase. At this point, all three were placed under arrest and given Miranda warnings. Miranda v. Arizona, 384 U.S. 436 (1966). The total length of time of defendants' detention prior to the arrest is disputed, although it appears to have been between ten and thirty minutes.

II

Following the evidentiary hearing on the motion to suppress, the district court entered its order denying the motions. In so ruling, the court found that sufficient objective and particularized facts existed to support the agents' suspicions and thereby rendered their investigatory detention and questioning of the defendants constitutional. Further, the court held that

the disclaimers of Knox and Ware as to ownership of the blue travel bag resulted in their abandonment of that item, thereby depriving them of standing to challenge the constitutionality of its search or subsequent admission into evidence of the contraband it contained.

Defendants raise a number of challenges to the validity of their airport detention; namely, that their initial seiqure was illegal because the agent lacked a reasonable, articulable suspicion of criminal activity that removal of defendants to the airport security office for "custodial interrogation" exceeded the limits of an investigatory field stop, and that the duration of the seizure also exceeded the permissible time limit for such a stop. Next, they argue that their inconsistent statements, first denying

from the restroom, she was no longer holding her stomach. Markonni also reported that the defendants had initially acted as through they didn't know each other, but later had talked with one another. Markonni checked with the airline and learned that each reservation had been made at the same time the previous day and that the tickets had been purchased with cash. He also checked a "call-back" telephone number in Miami that had been given to the airline by the person who had made the reservations, and discovered that the person who answered the telephone at that number did not know any of the defendants.

Agent Holmes and officers from Memphis Metro Narcotics met the defendants' flight at the Memphis

Airport. The officers stationed themselves outside the gate area and observed the defendants as they left the plane. All the officers were in plain clothes and no guns were drawn; a uniformed airport security guard, however, may have been positioned somewhere near the gate area. Agent Holmes noted that the defendants entered the gate area separately, and "looked around and acted like they didn't know each other." Agent Holmes also noticed Ware carrying a blue travel bag which she subsequently handed to Knox just outside the gate area.

Agent Holmes then approached the defendants, identified himself as a Special Agent of the DEA, and then thold them that he would like to speak with them for a few minutes. Holmes asked

the defendants to accompany him and the other officers (four or five in number) to the Airport Security Office. The defendants agreed, but requested that they pick up their luggage first. Agent Holmes and the local officers then assisted the defendants in retrieving their luggage from the baggage claim area. Agent Holmes asked both female defendants, either before or after retrieving the checked luggage, if he could "assist" them in carrying their bags. He was given the blue travel bag, according to the government by Knox, and according to the defendants, by "Knox or someone."

All of the above facts represent both lawful and effective police work.

After they arrived in the Airport Security Office, the defendants were

each placed in separate rooms. Agent Holmes went from room to room, questioning each defendant separately. Agent Holmes did not, during this questioning, give any of the defendants Miranda warnings.

All three defendants initially denied that they knew each other. When Agent Holmes asked to see defendant Champegnie's identification and airline ticket, Champegnie identified himself as Altamont Champegnie, but stated that he had lost his boarding pass and airline ticket. Knox also told Agent Holmes that she did not have her ticket. While questioning Ware, Agent Holmes saw Ware reach into her purse to retrieve her identification, and in doing so, she pulled out a group of airline tickets and boarding passes. Agent Holmes asked

Ware if he could see the tickets. The tickets and boarding passes were listed in the names of Kim Ware, Dorothy Knox, and A. Stanford, the latter of which was later discovered to be the name under which Champegnie was traveling. Once Champegnie knew that Agent Holmes had seen the tickets, he acknowledged that he did know Ware and Knox, although he first represented that he had only met them on the plane, and shortly thereafter, he stated that he had known them for a couple of months. While Agent Holmes was questioning the defendants, each defendants' luggage was located with them in their respective rooms, except for the blue travel bag, which was placed just outside the door of Ware's room.

Agent Holmes unzipped, but did not search, the blue travel bag prior to obtaining each defendant's consent to search. Holmes testified that he unzipped the bag out of habit, since it is standard procedure to check for a weapon when interviewing an individual.

In addition, Holmes had a trained police dog go over the defendants' luggage in their presence. The dog responded positively for cocaine as to both the luggage and the blue travel bag. Subsequently, each defendant consented to a search of his or her individual luggage, but denied ownership or control of the blue travel bag. Ware claimed that the bag belonged to Knox and Knox claimed that the bag belonged to Ware. Approximately one kilogram of cocaine, valued at $35,000 was disco-

vered in the blue travel bag. The blue travel bag also contained female and unisex clothes (clothes which can be worn by either a man or a woman). Neither drugs nor contraband were found in any of the luggage, but a book on cocaine processing titled The Cocaine Handbook was found in Champegnie's briefcase. The book covered such topics as "Testing for Purity, Health Risk, Safeguards, Improving Quality, Inside the Cocaine Trade, and Cocaine and the Law."

After the search and discovery of the cocaine, the defendants were given Miranda warning and placed under formal arrest. Agent Holmes also testified that he had advised defendants of their rights prior to their signing the consent forms. The defendants had been

detained and/or questioned from ten to thirty minutes prior to their arrest (the parties' estimates vary and the District Court did not attempt to resolve this disputed question of fact). During the detention period the defendants were neither told they were free to go nor that they were under arrest. The District Court found that "[a] seizure of the person did occur when Agent Holmes stopped the defendants and requested that they come with him for questioning."

It appears to me that there is no question but that there was evidence of violation of the drug laws by all three of the defendants. What is at issue, however, is whether or not the procedures which were employed in isolating the defendants and questioning them

before giving them Miranda warnings so violated their constitutional rights as to require our concluding that the critical evidence seized should have been and must now be suppressed. Four cases are especially cited to us in this regard; United States v. Tolbert, 692 F.2d 1041 (6th Cir. 1982), cert denied, 464 U.S. 933 (1983); Rakas v. Illinois, 439 U.S. 128 (1978); Terry v. Ohio, 392 U.S. 1 (1968) and Reid v. Georgia, 448 U.S. 438, 440 (1980).

There is, however, a later opinion of the U.S. Supreme Court which I regard as controlling in our instant case. See Berkemer v. McCarty, 468 U.S. 420, 434 (1984). In Berkemer, the Supreme Court unanimously affirmed this Court's decision in McCarty v. Herdman, 761 F.2d 361 (1983). The single headnote in this

Court's treatment of the McCarty case stated "Miranda warnings must be given to all individuals prior to custodial interrogation, whether the offense investigated be a felony or a misdemeanor traffic offense."

As I read the record of our instant case it appears clear that each defendant was isolated in a separate room and questined from between ten and thirty minutes by law enforcement officers before Miranda warnings were given. It appears that evidence derived from this unwarned questioning after seizure and in isolation was admitted at trial against defendants. Under these circumstances, the convictions should have been and must now be vacated.

I am aware, of course, that the Supreme Court in Berkemer also held that

Miranda warnings need not be given during an ordinary traffic stop. The Court further noted "the absence of any suggestion in our opinions that Terry stops are subject to the dictates of Miranda." 468 U.S. at 440. However, whether the detention in the present case is considered a Terry stop, or a full seizure, it is clearly more akin to the station house interrogation which prompted Miranda than the ordinary traffic stop involved in Berkemer. Indeed, the airport security office functions as a station house at the airport, and should be treated accordingly. See Miranda, 384 U.S. at 445 (consolidated Miranda cases all involve questinging in a room in which defendant was cut off from the outside world); Berkemer, 468 U.S. at 437 (Miranda must be strictly

enforced in situations inwhich the concerns that produced that decision are implicated).

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs. O R D E R

DOROTHY ANN KNOX, (85-5952/86-5089)
KIMBERLY LAWANDA WARE (86-5097)

Defendants-Appellants.

Before: JONES, GUY, Circuit Judges and
EDWARDS, Senior Circuit Judge

Upon consideration of the petition for rehearing filed by the appellants the court concludes that the issues raised herein were fully considered upon the original oral argument and decision of this case.

It is therefore ORDERED that the petition for rehearing be and it hereby is denied. Judge Edwards adheres to his dissent.

ENTERED BY ORDER OF THE COURT
John P. Hehman, Clerk

Leonard Green, Chief Deputy

Filed March 30, 1988

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA

VS. No. 85-20121-M

STANFORD ALTAMONT CHAMPEGNIE,
KIMBERLY LAWANDA WARE and
DOROTHY ANN KNOX,

Defendants.

RULING ON MOTIONS TO SUPPRESS

In this case, all three of the defendants have filed motions to Suppress based upon alleged improper searches and seizures of their person and property at the Memphis, Tennessee International Airport.

Facts

An evidentiary hearing was held at which the facts hereinafter set forth were established. The seizures complained about in Memphis, Tennessee

were precipitated by information telephoned to Special Agent Richard Holmes of the Memphis, Tennessee office of the Druge Enforcement Administration (DEA) by Special Agent Paul Markonni of the Atlanta, Georgia office of the DEA. Agent Markonni reported that the three defendants, Champegnie, Ware and Knox, first came under observation by law enforcement officers in the Atlanta Airport as they exited an airplane arriving from Miami, Florida. He further reported that he first noticed the defendants because the arm of defendant Ware was placed across her abdomen, as if holding something. Each of the defendants proceeded to restrooms and upon emerging, it was noted that Ware no longer held her stomach. He also reported that he noticed that defendant Champegnie had initially acted as if he

didn't know the other defendants, and only later did he speak with his companions. Upon checking with their airline, Markonni discovered that each of the reservations had been made at the same time the previous day and that the tickets had been purchased with cash. A check of the "call-back" number revealed that no one at that telephone number knew the defendants. After this information was relayed to Agent Richard Holmes in Memphis, he was waiting at the airport for the defendants' flight when it arrived from Atlanta. As they disembarked, he saw Ware hand a travel bag she was carrying to Knox. Holmes then approached the trio, identified himself, and requested that they follow him to another location in the airport for questioning. The defendants acquiesced

and were taken to three separate rooms. Their luggage subsequently was sent up to the vicinity of the separate rooms. They were neither told that they were free to go nor that they were under arrest. Early in the process the defendants contended that they did not know each other, but later it was discovered that the defendant Knox had the airplane tickets for all three defendants. Following questioning of from ten to thirty minutes (the government and the defendants' estimates do not correspond), each defendant then consented to a search of his or her individual baggage. Each defendant, however, denied ownership or control of the travel bag.

The search of the luggage revealed nothing. However, inside the travel bag, in addition to some female and

"unisex" clothes (sport garments which could be worn by either a man or woman), the agents found approximately one kilogram of a substance resembling cocaine. A dog from the Metro Narcotics Unit was brought to the area and reacted by pointing to the substance. The defendants were then arrested.

Issues of Law

Each of the defendants has moved to suppress the cocaine found in the travel bag despite the fact that at the time of the search each also denied ownership or possession of the bag. The government argues that the bag was abandoned and thus the defendants lack standing to challenge the search, since by their disclaimer, any expectation of privacy was relinquished. The Sixth Circuit Court of Appeals has provided precise

guidance for this Court with its decision in United States v. Tolbert, 692 F.2d 1041 (6th Cir. 1982), a case with many similarities of fact and identical issues of law. In that case, the court notes at the onset that "each case raising a Fourth Amendment issue must be judged on its own facts," citing United States v. Mendenhall, 446 U.S. 544, 554 n.6 (1980). Tolbert holds invalid any disclaimer of property made after a defendant has been illegally seized. Thus the Court's first inquiry must focus on whether the stop and detention of the defendants at the Memphis airport meets constitutional muster.

The Constitutionality of the Seizure

A seizure of the persons did occur when agent Holmes stopped the defendants and requested that they come with him

for questioning. United States v. Jefferson, 650 F.2d 854 (6th Cir. 1981) (a stop followed by an immediate request to accompany is considered a seizure), but brief investigatory detentions are permissible if "supported by a reasonable and articulable suspicion that the person seized [was] engaged in criminal activity." Reid v. Georgia, 448 U.S. 438 (1980). In determining which suspicions are "reasonable and articulable," courts are directed to look at the totality of the circumstances. United States v. Cortez, 449 U.S. 411, 417 (1981). In Cortez the Supreme Court instituted a two-part test in an attempt to further define this amorphous standard: the police must have both an "objective" and a "particularized" basis for their suspicions.

The first requirement is satisfied if the defendant displays "objective" indications of criminality, such as following a common pattern of criminal operation. This pattern need only by recognizable by one "versed in the field of law enforcement." Cortez at 417. In the case at bar, the defendants fit several characteristics of the DEA's drug courier profile: 1) they were traveling from Miami, a source city; 2) their airline tickets were purchased with cash; and 3) the call-back number given to the airline was not accurate. Thus, there was enough "objective" evidence to support a reasonable and articulable suspicion by police.

As noted above, satisfaction of the "objective requirement is not enough. Cortez also requires that acts of the

defendants themselves arouse a suspicion of criminal activity. At the time of the stop, the police also had the requisite "particularized" suspicion by Agent Markonni's having seen defendant Ware exit the plane as if holding something under her clothing. He also noted that defendant Champegnie initially acted as if he were not traveling with the other two defendants. These actions directed the attention of the police to these particular defendants.

Taken together, these objective and particularized facts provide a reasonable and articulable basis for the suspicion of the police, and thus the investigatory detention of the defendants violated no constitutional protections.

The Abandonment Issue

The government maintains that by disclaiming ownership and possession of the travel bag, the defendants lack standing to contest its search. The government is correct in its belief that an abandonment results in a lack of standing. As the Tolbert court states:

> It should be emphasized that the term "abandonment," as employed herein, does not refer to traditional concepts of property law. The concept of abandonment considered in the present context is a Fourth Amendment issue and the "capacity to claim the protection of the Fourth Amendment depends not upon a property right in the invaded place but upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place." Rakas v. Illinois, 436 U.S. 128, 143, 99 S.Ct. 421, 430, 58 L.Ed.2d 387 (1978). Thus, the crucial inquiry is "whether governmental officials violated any legitimate expectation of pri-

vacy held by the [defendant]" Rawlings v. Kentucky, 448 U.S. 98, 106, 100 S.Ct. 2556, 2562, 65 L.Ed.2d 633 (1980). Tolbert at 1044.

Defendant Champegnie has claimed that the clothing in the bag is his. However, ownership of the property in the bag by any of the defendants is irrelevant. Rather, the Court must focus upon whether the defendants had a legitimate expectation of privacy in the bag at the time of search. It is widely held that a disclaimer of ownership of luggage demonstrates a lack of such an expectation. See, e.g., United States v. Kendall, 655 F.2d 199 (9th Cir. 1981), cert. denied, 455 U.S. 941, 102 S.Ct. 1434, 71 L.Ed.2d 652 (1982); United States v. Berd, 634 F.2d 979 (5th Cir. 1981); United States v. Canady, 615 F.2d 694 (5th Cir. 1980), cert. denied,

449 U.S. 862, 101 S.Ct. 165, 66 L.Ed.2d 78 (1980); United States v. Colbert, 474 F.2d 174 (5th Cir. 1973) (en banc). The defendants' abandonment extinguished any legitimate expectations of privacy they may have had in the bag, and thus none of the defendants, Champegnie, Knox, or Ware, has standing to challenge the search. Therefore, the motions to suppress are denied.

IT IS SO ORDERED.

ENTERED: this 30th day of September, 1985.

ROBERT M. McRAE, JR.
UNITED STATES DISTRICT JUDGE

(2)

No. 87-1927

FILED
JUL 22 1988
JOSEPH E. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1988

DOROTHY ANN KNOX AND
KIMBERLY LAWANDA WARE, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

CHARLES FRIED
Solicitor General
EDWARD S.G. DENNIS, JR.
Acting Assistant Attorney General
PATTY MERKAMP STEMLER
Attorney
Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTIONS PRESENTED

1. Whether the stop of petitioners in the Memphis airport was supported by reasonable suspicion that they were involved in narcotics trafficking.

2. Whether petitioners were arrested, rather than detained, when they accompanied a DEA agent to an airport security office for questioning.

3. Whether petitioners should have received *Miranda* warnings prior to questioning.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	5
Conclusion	15

TABLE OF AUTHORITIES

Cases:

Adams v. *Williams*, 407 U.S. 143 (1972) 11
Berkemer v. *McCarty*, 468 U.S. 420 (1984) 13
California v. *Beheler*, 463 U.S. 1121 (1983) 11, 13, 14
Florida v. *Rodriguez*, 469 U.S. 1 (1984) 5
Florida v. *Royer*, 460 U.S. 491 (1983) 5, 6, 7, 12
Michigan v. *Summers*, 452 U.S. 692 (1981) 11
Minnesota v. *Murphy*, 465 U.S. 420 (1984) 13
New York v. *Quarles*, 467 U.S. 649 (1984) 13
Oregon v. *Mathiason*, 429 U.S. 492 (1977) 11, 13, 14
Reid v. *Georgia*, 448 U.S. 438 (1980) 6
Terry v. *Ohio*, 392 U.S. 1 (1968) 11
United States v. *Beraun-Panez*, 812 F.2d 578 (9th Cir. 1987) 14
United States v. *Berd*, 634 F.2d 979 (5th Cir. 1981) 6, 7, 13
United States v. *Borys*, 766 F.2d 304 (7th Cir. 1985), cert. denied, 474 U.S. 1082 (1986) 10-11
United States v. *Davies*, 768 F.2d 893 (7th Cir.), cert. denied, 474 U.S. 1008 (1985) 10
United States v. *Ehlebracht*, 693 F.2d 333 (5th Cir. 1982) . 7
United States v. *Espinosa-Guerra*, 805 F.2d 1502 (11th Cir. 1986) 6, 7, 11
United States v. *Hanson*, 801 F.2d 757 (5th Cir. 1986) ... 6, 7
United States v. *Jodoin*, 672 F.2d 232 (1st Cir. 1982) 7
United States v. *Kendall*, 655 F.2d 199 (9th Cir. 1981), cert. denied, 455 U.S. 941 (1982) 13
United States v. *Lewis*, 556 F.2d 385 (6th Cir. 1977), cert. denied, 434 U.S. 1011 (1978) 7
United States v. *Mendenhall*, 446 U.S. 544 (1980) 6, 14

Cases – Continued: Page

United States v. *Miller*, 589 F.2d 1117 (1st Cir. 1978), cert. denied, 440 U.S. 958 (1979) 13
United States v. *Palen*, 793 F.2d 853 (7th Cir. 1986) 7
United States v. *Puglisi*, 723 F.2d 779 (11th Cir. 1984) ... 7
United States v. *Sadosky*, 732 F.2d 1388 (8th Cir.), cert. denied, 469 U.S. 884 (1984) 7
United States v. *Sharpe*, 470 U.S. 675 (1985) 9
United States v. *Sokolow*, cert. granted, No. 87-1295 (June 6, 1988) 8, 15
United States v. *Tolbert*, 692 F.2d 1041 (6th Cir. 1982), cert. denied, 464 U.S. 933 (1983) 12-13
United States v. *Veatch*, 674 F.2d 1217 (9th Cir. 1981) ... 12
United States v. *Whitehead*, No. 87-5093 (4th Cir. May 24, 1988) 6, 7
United States v. *Williams*, 726 F.2d 661 (10th Cir.), cert. denied, 467 U.S. 1245 (1984) 7

Constitution and statute:

U.S. Const. Amend. IV 4
21 U.S.C. 841(a)(1) 2

In the Supreme Court of the United States

OCTOBER TERM, 1988

No. 87-1927

DOROTHY ANN KNOX AND
KIMBERLY LAWANDA WARE, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A72) is reported at 839 F.2d 285. The opinion of the district court denying petitioners' motion to suppress evidence (Pet. App. C1-C12) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on February 12, 1988. A petition for rehearing was denied on March 30, 1988. The petition for a writ of certiorari was filed on May 23, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following the denial of a motion to suppress evidence, petitioner Knox entered a conditional guilty plea in the United States District Court for the Western District of Tennessee to the possession of cocaine with the intent to distribute it, in violation of 21 U.S.C. 841(a)(1). Petitioner Ware was tried and convicted of that offense. Petitioner Knox was sentenced to two years' imprisonment, to be followed by a three-year special parole term. Petitioner Ware was sentenced to three years' imprisonment, to be followed by a three-year special parole term. The court of appeals affirmed.

1. On June 14, 1985, Paul Markonni, an agent of the Drug Enforcement Agency, was patrolling the Atlanta airport. He saw petitioners and their co-defendant Altamont Champegnie get off a flight from Miami, Florida. Petitioner Ware ran toward the bathroom with one arm over her stomach. When she emerged from the bathroom, she was no longer holding her stomach. The three confederates initially acted as if they did not know each other, but they appeared to be together. Agent Markonni watched them throughout their stay in the Atlanta airport. After they boarded a flight for Memphis, Agent Markonni checked their reservations. He found that all three had made their reservations at the same time the previous day and that they had paid for their tickets in cash. He telephoned the callback number that the three had provided the airline. The person who answered the telephone did not recognize any of the names in which the tickets were purchased. Agent Markonni relayed this information to DEA Agent Richard Holmes in Memphis. C.A. App. 47-51, 63.

Agent Holmes watched petitioners and Champegnie as they got off the plane in Memphis. Petitioner Ware was

carrying a blue bag, which she later handed to petitioner Knox. Agent Holmes approached the group and said that he would like to speak to them. Petitioners and Champegnie agreed, but they said that they would first like to get their luggage. After retrieving their luggage, petitioners and Champegnie accompanied Agent Holmes to police interviewing rooms at the terminal. Agent Holmes told petitioners that they were not under arrest. When he individually asked Ware and Champegnie if he could see their airline tickets, each one denied having a ticket. Also, they both denied that they knew each other or Knox. When Agent Holmes asked Knox if he could see her ticket, she opened her handbag, revealing three tickets. Knox also initially denied knowing her traveling companions, but when the tickets were discovered, Knox admitted that she knew Ware and Champegnie. Both Ware and Knox denied owning the blue bag that they had taken turns carrying when they landed in Memphis; each one said that the bag was owned by the other. Petitioners and Champegnie then signed forms consenting to a search of their luggage, including the blue bag. A trained narcotics detection dog alerted to all of the luggage. Agent Holmes searched the blue bag and found two and one-half pounds of cocaine. He then arrested petitioners and Champegnie. C.A. App. 53-61, 64-83.

2. Petitioners moved to suppress the cocaine and their statements to Agent Holmes, and the district court denied the motion. The court found that Agent Holmes detained petitioners when he first approached them in Memphis and asked them to accompany him to the interview room for questioning. Pet. App. C6-C7. The court ruled, however, that the stop was supported by reasonable suspicion that petitioners were in possession of narcotics. Thereafter, the court held, each petitioner abandoned the blue bag by denying that it was hers. That denial, the court

held, extinguished any privacy interest petitioners might have had in the bag. *Id.* at C10-C12.

3. The court of appeals affirmed by a divided vote. Pet. App. A1-A58. The court first held that petitioners were seized when they were approached by Agent Holmes (*id.* at A12-A13), but that the detention was supported by reasonable suspicion (*id.* at A14-A18). The court also held that the investigative detention was not equivalent to an arrest because (1) the detention lasted no longer than was necessary to complete its purpose; (2) Agent Holmes did not retain petitioners' airline tickets; (3) he told petitioners that they were not under arrest; and (4) he helped petitioners retrieve their luggage at their request. *Id.* at A21-A22, A31-A33. For that reason, the court held, Agent Holmes was not required to give petitioners *Miranda* warnings before questioning them. *Id.* at A31. Finally, the court ruled that petitioners had abandoned any reasonable expectation of privacy they might have in the blue bag by denying that they owned it. *Id.* at A33-A36.[1]

Judge Edwards dissented on the question whether petitioners' statements should have been suppressed under *Miranda*; he did not address any of the Fourth Amendment issues in the case. In his view, placing petitioners in separate rooms at the airport terminal was tantamount to taking them to a police station, and petitioners therefore should have been given *Miranda* warnings before they were questioned. Pet. App. A70-A72.

---

[1] In a concurring opinion, Judge Jones stated that petitioners were not "in custody" when they were questioned by Agent Holmes in separate rooms, and *Miranda* warnings were therefore not necessary. Pet. App. A57. Judge Jones also concluded that petitioners' statements were voluntarily given. *Id.* at A58.

ARGUMENT

Petitioners challenge the legality of their detention at the airport on several grounds. They argue that their initial detention was not supported by reasonable suspicion; that the detention was unduly long; that their movement to security offices at the terminal was tantamount to an arrest that was not supported by probable cause; and that they should have received *Miranda* warnings before being questioned in the offices.

1. A law enforcement officer may stop and briefly detain a person for investigative purposes if the officer observes suspicious conduct that leads him reasonably to believe in light of his experience that a suspect may be in possession of narcotics, even if the officer lacks probable cause to arrest the suspect for that crime. See, *e.g.*, *Florida* v. *Rodriguez*, 469 U.S. 1 (1984); *Florida* v. *Royer*, 460 U.S. 491, 502 (1983) (plurality opinion). In this case, Agent Holmes, who was experienced in detecting narcotics traffickers (C.A. App. 47), had reasonable grounds to believe that petitioners may have been in possession of narcotics when they were detained at the Memphis airport.[2] At that time, Agent Holmes knew the following:

---

[2] Both courts below found that petitioners were detained when they were first approached by Agent Holmes, but the record would also support a contrary conclusion. Only Agent Holmes testified at the suppression hearing; petitioners did not testify or offer any evidence. According to Agent Holmes, when he approached petitioners he did not display a weapon, he told petitioners that he would like to talk to them, and he asked them to accompany him to a police interview room. Petitioners agreed to accompany Agent Holmes, but stated that they first wanted to obtain their luggage from the baggage claim area. Agent Holmes offered to help them with their luggage, and he carried it for them. Agent Holmes also told petitioners that they were not under arrest. C.A. App. 54, 65, 67-69. On this record, petitioners were not coerced into going to the security offices.

(1) petitioners were traveling to Memphis from Miami, a known source city for narcotics; (2) petitioners purchased their tickets with cash 24 hours before their departure; (3) they gave the airline a false callback number; (4) during the stopover in Atlanta, petitioner Ware exited the plane with one arm covering her stomach as if she was attempting to conceal something; and (5) petitioners and Champegnie sought to conceal the fact that they were traveling together. This Court and the courts of appeals have recognized that factors such as those are indicative of drug trafficking. See, *e.g.*, *Florida* v. *Royer,* 460 U.S. at 502 (plurality opinion); *United States* v. *Mendenhall,* 446 U.S. 544, 564-565 (1980) (opinion of Powell, J.); *United States* v. *Whitehead,* No. 87-5093 (4th Cir. May 24, 1988), slip op. 20; *United States* v. *Espinosa-Guerra,* 805 F.2d 1502, 1508 (11th Cir. 1986); *United States* v. *Hanson,* 801 F.2d 757, 761-763 (5th Cir. 1986); *United States* v. *Berd,* 634 F.2d 979, 986 (5th Cir. 1981).

The facts of this case differ from those in *Reid* v. *Georgia,* 448 U.S. 438 (1980), on which petitioners rely (see Pet. 14-16) and in which this Court found that the stop of two travelers in an airport was not supported by reasonable suspicion. In *Reid,* when the narcotics officers stopped the defendant, they knew only that (1) he and a companion had arrived in Atlanta from Fort Lauderdale, a source city for cocaine; (2) they arrived early in the morning, when law enforcement activity is light; (3) both persons carried only shoulder bags; and (4) the defendant and his companion attempted to conceal the fact that they were traveling together. In this case, Agent Holmes had additional information that the officers lacked in *Reid.* Agent Holmes knew that petitioners had purchased their tickets with cash only one day before their flight and that they had given the airline a false callback telephone number. Those factors are significant. Purchasing airline

tickets in cash and giving the airline a false callback telephone number are devices commonly used by drug couriers to avoid revealing their true identity in order to hamper police investigation.[3]

Thus, this case more closely resembles *Florida* v. *Royer*, *supra*, in which eight Members of the Court agreed that the following evidence was sufficient to establish reasonable suspicion that the suspect possessed narcotics: the suspect was traveling under an alias; he had paid cash for his ticket; he had put only a name and not an address on his checked luggage; he was young and casually dressed; and he seemed nervous while walking through the Miami airport. See 460 U.S. at 502 (plurality opinion); *id.* at 515-516 (Blackmun, J., dissenting); *id.* at 523-524 (Rehn-

---

[3] The cash purchase of airline tickets is commonly cited to support a finding of reasonable suspicion. See, *e.g.*, *United States* v. *Whitehead*, slip op. 20 ("Whitehead paid for his $403 ticket in cash, thus avoiding the need to present identification"); *United States* v. *Espinosa-Guerra*, 805 F.2d at 1508; *United States* v. *Hanson*, 801 F.2d at 761-763; *United States* v. *Williams*, 726 F.2d 661, 663 (10th Cir.), cert. denied, 467 U.S. 1245 (1984); *United States* v. *Jodoin*, 672 F.2d 232, 234 (1st Cir. 1982). An alias helps to avoid detection, and drug couriers, like other criminals, frequently use an alias or a false callback telephone number. See, *e.g.*, *Florida* v. *Royer*, 460 U.S. at 502 (plurality opinion); *United States* v. *Espinosa-Guerra*, 805 F.2d at 1508; *United States* v. *Hanson*, 801 F.2d at 763; *United States* v. *Palen*, 793 F.2d 853, 857 (7th Cir. 1986); *United States* v. *Sadosky*, 732 F.2d 1388, 1393 (8th Cir.), cert. denied, 469 U.S. 884 (1984); *United States* v. *Puglisi*, 723 F.2d 779, 789 (11th Cir. 1984); *United States* v. *Ehlebracht*, 693 F.2d 333, 336 (5th Cir. 1982); *United States* v. *Jodoin*, 672 F.2d at 233; *United States* v. *Berd*, 634 F.2d at 986 (traveling under an alias is "a practice common to drug couriers"; also stating that the use of a false callback number is "a practice commonly used by narcotics couriers to prevent later detection"); *United States* v. *Lewis*, 556 F.2d 385, 389 (6th Cir. 1977), cert. denied, 434 U.S. 1011 (1978) (use of an alias when purchasing an airline ticket "indicated the likelihood of an illicit purpose in the trip").

quist, J., dissenting). Here, petitioners (and Champegnie) had paid for their tickets in cash, they gave the airline false information, and they acted in a suspicious manner while in the Atlanta terminal. In light of those similarities, the facts of this case, like those in *Royer,* suggested that petitioners may have been bringing narcotics back to their destination from Miami.

Although we believe that the court of appeals' ruling was correct, this Court may nonetheless wish to hold this case pending its decision in *United States* v. *Sokolow,* cert. granted, No. 87-1295 (June 6, 1988). In that case, the Ninth Circuit adopted a new two-part test for determining reasonable suspicion in the airport context. Under that test, before a law enforcement officer may make a *Terry* stop of a suspected drug courier traveling through an airport, the officer must be able to point to direct evidence that the suspect is involved in narcotics trafficking, and the officer must be able to supply empirical or statistical proof that the circumstantial evidence on which he relies does not also characterize a large number of innocent travelers. Some of the facts in this case are similar to those in *Sokolow,* but there are also some differences as well.[4]

---

[4] There are some similarities between this case and *Sokolow:* (1) like petitioners, Sokolow was traveling from Miami, the nation's primary source city for cocaine; (2) like petitioners, Sokolow made his return reservation the day before his trip and he paid for his tickets in cash; and (3) although Sokolow did not give a false callback number (his voice was on the recording machine), the name in which his callback number was listed differed from the name in which he purchased his tickets. In addition to those facts, the agents in *Sokolow* knew that Sokolow's stay in Miami was brief, that he was nervous when he purchased the airline tickets, that he carried a large roll of $20 bills to Miami, that he nervously scanned the terminal during his stopover in Los Angeles, that he was casually dressed, and that he checked no luggage on either leg of his journey. Unlike petitioners, however,

For instance, petitioner Ware acted as if she was attempting to conceal something on her person, and all three confederates attempted to conceal the fact that they were traveling together. Those facts appear to be the type of direct proof of narcotics smuggling that the Ninth Circuit found critical to the reasonable suspicion determination in *Sokolow*. The judgment in this case therefore may survive even if this Court in *Sokolow* were to endorse the Ninth Circuit's two-part reasonable suspicion test. Nevertheless, this Court's decision in *Sokolow* could potentially affect the disposition of this case, and it therefore may be appropriate to hold the petition in this case pending the decision in *Sokolow*.

2. Petitioners also argue (Pet. 16-21) that their detention blossomed into a full-scale arrest when they accompanied Agent Holmes to the airport security offices. To support their claim, petitioners focus on the length and location of their detention, but neither factor transformed their detention into an arrest.

In *United States* v. *Sharpe*, 470 U.S. 675 (1985), this Court rejected the per se rule adopted by the court of appeals that "a 20-minute detention is too long to be justified under the *Terry* doctrine." *Id.* at 687. After noting that "our cases impose no rigid time limitation on *Terry* stops" (*id.* at 685), the Court explained that, "[i]n assessing whether a detention is too long in duration to be justified as an investigative stop, we consider it appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant." *Id.* at 686. Under that standard, the delay

---

Sokolow and his companion did not attempt to conceal the fact that they were traveling together; nor did Sokolow give the agents reason to believe that he might be concealing drugs on his person, as Ware did when she ran off the plane with one arm covering her stomach.

in this case, which Agent Holmes estimated to have been no more than 10 to 30 minutes (C.A. App. 55, 70, 79), did not render the detention of petitioners unreasonable.

Perhaps half the delay in this case stemmed from petitioners' request to retrieve their luggage before accompanying Agent Holmes to the airport security offices. See C.A. App. 55 (Agent Holmes estimated that it may have taken 10 to 15 minutes for petitioners to reach the interview rooms, counting the detour to the baggage claim area). Once Agent Holmes had escorted petitioners and Champegnie to the offices, he placed each one in a separate office and questioned each briefly about his or her travel arrangements and ownership of the luggage. Agent Holmes asked only a few questions of each person before moving on to the next. Agent Holmes then asked each person for consent to a search of the luggage. After obtaining their consent, the agent had a narcotics detection dog, which was ready and waiting (see C.A. App. 51-53, 61), examine the blue carry-on bag. Agent Holmes avoided any unnecessary delay in determining whether petitioners and Champegnie were transporting narcotics. In fact, it is difficult to imagine how Agent Holmes could have done anything more to accelerate his investigation. Within a brief period of time, he questioned petitioners and Champegnie, he discovered that petitioners had lied about their relationship, and he had a narcotics detection dog examine the carry-on bag. Agent Holmes therefore diligently pursued a means of investigation that confirmed his suspicion that petitioners were transporting drugs. The fact that his investigation, including the detour to pick up petitioner's luggage, may have taken up to 30 minutes therefore did not transform the detention into an arrest. Compare *United States* v. *Davies*, 768 F.2d 893, 900-902 (7th Cir.), cert. denied, 474 U.S. 1008 (1985) (45-minute detention of a suspect not unreasonable under *Sharpe*); *United*

States v. *Borys*, 766 F.2d 304, 312-314 (7th Cir. 1985), cert. denied, 474 U.S. 1082 (1986) (75-minute detention of luggage not unreasonable under *Sharpe*); see *Michigan* v. *Summers*, 452 U.S. 692, 700 n.12 (1981) ("If the purpose underlying a *Terry* stop—investigating possible criminal activity—is to be served, the police must under certain circumstances be able to detain the individual for longer than the brief time period involved in *Terry* [v. *Ohio*, 392 U.S. 1 (1968)] and *Adams* [v. *Williams*, 407 U.S. 143 (1972)].").

Petitioners also rely on the fact that they were questioned in security offices at the airport. That fact did not convert the detention into a custodial arrest, because the circumstances under which petitioners were questioned did not amount to custody of the type necessary to constitute a formal arrest. For instance, Agent Holmes did not use or threaten to use force, and he told petitioners that they were not under arrest. Petitioners asked to retrieve their luggage from the baggage claim area prior to the interviews, which indicates that petitioners were not so intimidated by Agent Holmes as to believe that their freedom of movement had been severely curtailed. Agent Holmes offered to assist petitioners in carrying their luggage to the offices, thereby fostering an atmosphere of cooperation rather than domination. Finally, Agent Holmes asked petitioners only a few questions before formally placing petitioners under arrest. Under these circumstances, the fact that petitioners were questioned in an airport security office was not enough to render the questioning custodial in nature. See *California* v. *Beheler*, 463 U.S. 1121 (1983), and *Oregon* v. *Mathiason*, 429 U.S. 492 (1977) (both holding that *Miranda* warnings were not required during a stationhouse interview when the suspect was told that he was not under arrest); *United States* v. *Espinosa-Guerra*, 805 F.2d at 1509-1510 (taking the suspect to an airline of-

fice for questioning does not necessarily transform the detention into an arrest).

The facts of this case contrast sharply with those in *Florida* v. *Royer,* in which the Court held that moving the suspect from the concourse to an airport office was equivalent to a formal arrest. 460 U.S. at 501-507 (plurality opinion). Royer was waiting to board a flight to New York when he was approached by the agents. Royer never agreed to accompany the agents to the interview room, and the agents retained Royer's airplane tickets, thereby preventing him from boarding his flight to New York. Without Royer's consent, the agents then used his ticket stubs to retrieve his checked baggage, which had been en route to the plane. Finally, the agents never told Royer that he was free to depart or that he was not under arrest. The encounter between Royer and the police was thus far more coercive than the encounter between petitioners and Agent Holmes. The encounter in this case was characterized by mutual cooperation, not confrontation, and the agent's actions could not have led petitioners to believe that they were under arrest. The encounter therefore did not rise to the level of an arrest, even though petitioners were questioned at an airport security office.

3. Petitioners' final claim[5] is (Pet. 21-27) that their statements to Agent Holmes should have been suppressed

---

[5] Petitioners have also presented the question (Pet. ii) whether the district court erred in finding that they abandoned any reasonable expectation of privacy that they might have had in the blue carry-on bag by disclaiming that they owned it, but petitioners have not elaborated on that claim in their petition. In any event, the district court's finding (Pet. App. C11-C12) that petitioners abandoned any privacy interest they may have had in the bag does not warrant further review. Disclaiming ownership of an item of property, such as luggage, amounts to a waiver of any privacy interest in its contents. See, *e.g.*, *United States* v. *Veatch,* 674 F.2d 1217, 1221 (9th Cir. 1981); *United*

because the agent did not give petitioners *Miranda* warnings before asking them whether they were traveling together and whether they would consent to a search of the blue carry-on bag. That claim lacks merit.[6]

The *Miranda* warnings must be given before questioning only if the suspect is "in custody," and a person is not "in custody" under *Miranda* unless he is subjected to a " 'formal arrest or restraint on [his] freedom of movement' of the degree associated with a formal arrest." *California* v. *Beheler,* 463 U.S. at 1125 (quoting *Oregon* v. *Mathiason,* 429 U.S. at 495). Accord *Berkemer* v. *McCarty,* 468 U.S. 420, 440 (1984); *New York* v. *Quarles,* 467 U.S. 649, 655 (1984); *Minnesota* v. *Murphy,* 465 U.S. 420, 430-431 (1984). Moreover, in *Berkemer* v. *McCarty, supra,* this Court held that a person need not be given *Miranda* warnings during a *Terry* stop when a suspect is briefly detained for investigative purposes. *Berkemer* v. *McCarty,* 468 U.S. at 440.

Petitioners do not deny that, during an investigative detention, a police officer may ask a suspect a few questions that are related to the purpose of the detention without first giving a suspect *Miranda* warnings. Rather, peti-

---

States v. *Tolbert,* 692 F.2d 1041, 1044-1045 (6th Cir. 1982), cert. denied, 464 U.S. 933 (1983); *United States* v. *Kendall,* 655 F.2d 199, 202 (9th Cir. 1981), cert. denied, 455 U.S. 941 (1982); *United States* v. *Berd,* 634 F.2d at 987; *United States* v. *Miller,* 589 F.2d 1117, 1131 (1st Cir. 1978), cert. denied, 440 U.S. 958 (1979).

In any event, even if petitioners retained some privacy interest in the blue carry-on bag, the search of the bag was valid pursuant to petitioners' voluntary consent to the search of all their luggage.

[6] Petitioners err in suggesting (Pet. ii, 27) that the cocaine found in the blue carry-on bag also should be suppressed on this ground. Although this Court has not conclusively resolved the issue, we submit that a violation of *Miranda* does not require the suppression of physical evidence, rather than a suspect's statements. See *New York* v. *Quarles,* 467 U.S. 649, 665-672 (1984) (opinion of O'Connor, J.).

tioners' claim is essentially that their detention went beyond a *Terry* stop and was tantamount to an arrest. As we have explained above, however, petitioners were not formally arrested until the narcotics detection dog alerted to the odor of drugs in the blue carry-on bag, and the detention of petitioners prior to that point did not amount to a restraint that was equivalent to a formal arrest. The fact that the questioning took place in an airport security office did not require that *Miranda* warnings be given, because a person who is questioned at a police station is not necessarily "in custody" for *Miranda* purposes. *California* v. *Beheler, supra*; *Oregon* v. *Mathiason, supra*; cf. *United States* v. *Mendenhall,* 446 U.S. 544, 557-558 (1980).[7] Accordingly, Agent Holmes did not have to give petitioners *Miranda* warnings before asking them whether they were traveling together and whether they would consent to a search of their luggage.

---

[7] The decision below does not conflict with *United States* v. *Beraun-Panez,* 812 F.2d 578 (9th Cir. 1987), on which petitioners rely (Pet. 25-26). The difference between the result in that case and this one is attributable to a difference in the facts, not a disagreement on principle. The Ninth Circuit applied the same standard in that case that the Sixth Circuit applied in this one (see 812 F.2d at 580) to facts that the court of appeals viewed as highly coercive. *Id.* at 579 (suspect questioned for 30-90 minutes; he was asked whether he committed the crime under investigation; he was told that he could be deported if he was convicted; "the officials resorted to a good guy/bad guy routine" during questioning; the suspect not told that he was not under arrest).

CONCLUSION

With respect to the issue raised in Question I(a) of the petition, the petition should be held pending the decision in *United States* v. *Sokolow*, cert. granted, No. 87-1295 (June 6, 1988), and then disposed of as appropriate in light of that decision. In all other respect, the petition should be denied.

Respectfully submitted.

CHARLES FRIED
Solicitor General

EDWARD S.G. DENNIS, JR.
Acting Assistant Attorney General

PATTY MERKAMP STEMLER
Attorney

JULY 1988

☆ U.S. GOVERNMENT PRINTING OFFICE: 1988—202-037/60568

and then admitting they knew each other, should have been suppressed for lack of Miranda warnings. Finally, they contend that their abandonment, if any, of the travel bag was the product of and tainted by the illegal search and that they have standing to contest the validity of its search.

A. The Validity of the Investigatory Stop

In assessing defendants' claims on this issue, we must establish, as a threshold question, whether the actions of Agent Holmes and the Memphis police constituted a "seizure" within the meaning of the Fourth Amendment. Only if they were seized are defendants vested with any right to constitutional safeguards. United States v. Mendenhall, 446 U.S. 544, 553 (1980). The district

court, relying on our decision in United States v. Jefferson, 650 F.2d 854 (6th Cir. 1981), found that defendants had been seized when approached by Holmes and asked to accompany him for questioning. We agree.

The Supreme Court has identified a "seizure" as occurring at that point in time when, "in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." Mendenhall, 446 U.S. at 554. In Jefferson, we held that:

> [A]gent Markonni did not merely stop Jefferson to ask him a few questions; he stopped him and immediately after identifying himself as a DEA agent requested Jefferson to accompany him to the bggage claims office. In these circumstances, Jefferson could not reasonably believe that he was free to leave. This was a "seizure" within the meaning of the Fourth Amendment.

650 F.2d at 856.

However, even brief investigatory detentions arising to the level of a "seizure" are constitutionally permissible if "supported by a reasonable and articulable suspicion that the person [was] engaged in criminal activity." Reid v. Georgia, 448 U.S. 438 (198). In determining which suspicions are "reasonable and articulable," courts are directed to consider the totality of the circumstances. United States v. Cortez, 449 U.S. 411, 417 (1981). The police must demonstrate the existence of an "objective" as well as a "particularized" basis for their suspicions. Id. The first requirement is satisfied by evidence showing a common pattern of criminal operation; in this case, a showing that defendants met several charac-

teristics of the DEA's drug courier profile.[2] The district court found that the agents' knowledge that (1) defendants were traveling from Miami, a source city, (2) their airline tickets were purchased with cash, and (3) the call-back number given to the airline was inaccurate, was sufficient to satisfy the first prong of the test. Noting that satisfaction of the first prong was

---

[2]"The 'drug courier profile' is an abstract of characteristics found to be typical of persons transporting illegal drugs." Florida v. Royer, 460 U.S. 491, 493 n.2 (1983). As we noted in United States v. Saperstein, the variety of traits constituting these "profiles," which varies from airport to airport, defies any attempt at mechanical application and requires courts to assess "whether in each particular case the combination of facts present and the manner in which they are exhibited justifes a stop." 723 F.2d 1221, 1228 (6th Cir. 1983).

not enough, the district court found the requisite particularized suspicion in Agent Markonni's observations at the Atlanta airport; namely, defendant Ware exiting the plane "as if holding something under her clothing" as well as the fact that defendants initially appeared unfamiliar with each other but were later seen talking together.

Defendants object to the aggregation of the agents' observations to establish the requisite "reasonable and articulabe" suspicions. They contend that, individually, nervousness (citing United States v. Andrews, 600 F. 2d 563 (6th Cir.), cert. denied sub nom. Brooks v. United States, 444 U.S. 878 (1979), travel to and from a "source city" (citing United States v. Saperstein, 723 F.2d 1221 (6th Cir. 1983)), and deplaning at

different times and appearing unfamiliar with one another (citing Reid v. Georgia, 448 U.S. 438 (1980)), are entirely consistent with innocent behavior and therefore entitled to no weight. While it is true that each of these factors, in isolation, would be insufficient as a matter of law to establish the requisite level of suspicion, this court, following the mandate of the Supreme Court, has held that articulable suspicion is to be based upon an assessment of all circumstances surrounding the actions of a suspected wrongdoer. United States v. Williams, 754 F.2d 672 (6th Cir. 1985). Further, a pattern of suspicious behavior need only be recognizable by one "versed in the field of law enforcement." Cortez, 449 U.S. at 417. We find the following factors

relevant and sufficient to justify the defendants' seizure at the Memphis airport: (1) they were traveling from a "source city"; (2) their tickets were purchased only the day before and paid for with cash; (3) they deplaned separately and attempted to conceal the fact that they were traveling together; (4) sometime after deplaning, both in Atlanta and Memphis, defendants were observed talking together; (5) immediately upon deplaning in Atlanta, defendant Ware rushed to the restroom holding her arms across her stomach; and (6) none of the defendants were known at the callback number given when their tickets were puchased.

B. The Challenge to the Duration of the Detention

The defendants next argue that, even

if their initial detention was proper, Agent Holmes exceeded its permissible scope and duration. The Supreme Court has directed that "an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." Florida v. Royer, 460 U.S. 491, 500 (1983). Similarly, the investigative methods employed should be the least intrusive means reasonable available to verify or dispel the officer's suspicion in a short period of time. Id. Further, the government has the burden of demonstrating that the seizure was properly limited, although the scope of the permissible intrusion will vary with the particular facts of each case. Id. Defendants argue that their detention of approximately thirty minutes was

inherently unreasonable. This issue has been recently addressed by the Supreme Court in United States v. Sharpe, 470 U.S. 675 (1985), wherein the Court refused to establish a per se rule as to the permissible duration of an investigatory stop. The Court, in reversing the Fourth Circuit Court of Appeals, stated that "[t]the Court of Appeals' decision would effectively establish a per se rule that a twenty minute detention is too long to be justified under the Terry [investigatory stop] doctrine. Such a result is clearly and fundamentally at odds with our approach in this area." Id. at 686 The Sharpe Court's opinion on this issue bears extensive quotation:

> In assessing whether a detention is too long in duration to be justified as an investigative

> stop, we consider it appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant... A court making this assessment should take care to consider whether the police are acting in a swiftly developing situation and in such cases the Court should not indulge in unrealistic second guessing.... A creative judge engaged in post hoc evaluation of police conduct can almost always imagine some alternative means by which the objective of the policy might have been accomplished. But "[t]he fact that the protection of the public might, in the abstract, have been accomplished by 'less intrusive' means does not, in itself, render the search unreasonable."... The question is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or to pursue it.

Id. at 686-87 (citations omitted).

Contributing to the length of defendants' detention in this case was their initial insistence that they did

not know each other, despite the fact that they were walking together at the time they were approached by Holmes and had been observed passing the blue travel bag between them. Finally, we observe that the investigation was expedited through the presence of the drug-sniffing dog at the time of defendants' detention, which allowed a sniff search to be conducted as soon as defendants had orally consented. The Supreme Court expressly endorsed such a procedure in Royer, stating:

> The courts are not strangers to the use of trained dogs to detect the presence of controlled substances in luggage. There is no indication here that this means was not feasible and available. If it had been used, Royer and his luggage could have been momentarily detained while this investigative procedure was carried out...A negative result would have freed Royer in short

order; a positive result would have resulted in his justifiable arrest on probable cause.

460 U.S. at 505-506 (emphasis added.[3]

C. The Allegations of "Custodial Arrest" and Resulting Miranda Violation

Defendants contend this case is indistinguishable from Royer, in which the Supreme Court ruled that statements secured as a result of questioning in a separate airport office and without benefit of Miranda warnings must be suppressed. Admittedly, this is a difficult and unsettled area of law. We are guided in our analysis by somewhat

---

[3]We observe that Agent Holmes had arranged to have a Narcotics Unit dog present at the time of defendants' detention and that the dog-sniff carried out while their written consent was being obtained indicated a positive response to all pieces of defendants' luggage.

sparse and ambiguous precedent; however, a few rules of general applicability have emerged. The Supreme Court has counselled that "[a]lthough the circumstances of each case must certainly influence a determination of whether a suspect is 'in custody' for purposes of receiving Miranda protection, the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." California v. Beheler, 463 U.S. 1121, 1125 (1983)(per curiam) (quoting Oregon v. Mathiason, 429 U.S. 492, 495 (1977)(per curiam)). The test is an objective one: would a reasonable person in the defendant's position have felt that he was under arrest or was "otherwise deprived of his freedom of action in any significant way." Miranda,

384 U.S. at 477. Furthermore, recent Supreme Court cases have clarified that more is required to support a finding of custody than the fact that the questioning took place in an "inherently" coercive environment.

> [A] noncustodial situation is not converted to one in which Miranda applies simply because a reviewing court concludes that, even in the absence of any formal arrest or restraint on freedom of movement, the questioning took place in a "coercive environment." Any interview of one suspected of a crime by a police officer will have coercive aspects to it, simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime. But police officers are not required to administer Miranda warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom

> the police suspect. Miranda warnings are required only where there has been such a restriction on a person's freedom as to render him "in custody." It was that sort of coercive environment to which Miranda by its terms was not applicable, and to which it is limited.

Mathiason, 429 U.S. at 495. Accord United States v. Wallraff, 705 F. 2d 980, 991 (8th Cir. 1983)("simply identifying the place where an interrogation occurs does not conclusively establish the presence or absence of custody").

In Florida v. Rodriguez, 469 U.S. 1 (1984), the Supreme Court overturned the lower court's order suppressing evidence obtained as a result of an airport detention and search, stating that the court's order "reflects a misapprehension of the controlling principles of law governing airport stops" as set forth in Royer and Mendenhall. In Rodriguez,

three suspects were approached at the Miami airport after DEA agents observed them engaging in a certain behavior which they deemed suspicious. Defendants were questioned after moving from one side of the concourse and, based on inconsistencies in their answers, the agents asked for and received permission to search their luggage, whereupon a quantity of cocaine was discovered. The Court explicitly stated that "[s]uch a temporary detention for questioning in the case of an airport search is reviewed under the lesser standard enunciated in Terry v. Ohio, and is permissible because of the 'public interest involved in the suppression of illegal transactions in drugs or of any other serious crime.' " 469 U.S. at 5 (quoting Royer, 460 U.S. at 498-99).

In Berkemer v. McCarty, 468 U.S. 420 (1984), the Court rejected the argument that Miranda warnings should not be required in custodial interrogations which result from stops for routine traffic violations. Although the court refused to differentiate between custodial interrogations resulting in felony charges as opposed to misdemeanor charges, it also held that roadside questioning of a motorist detained pursuant to a routine traffic stop did not constitute custodial interrogation. In so ruling, the Court analogized the routine traffic stop to a Terry stop, pointing out that in all such detentions:

> [T]he officer may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions. But the detainee is not obligated to respond...The com-

> paratively nonthreatening character of detentions of this sort explains the absence of any suggestion to our opinions that Terry stops are subject to the dictates of Miranda.

Id. at 439-40.

Our task in this case is to determine whether the fact that defendants were escorted voluntarily to separate rooms in the airport for questioning constituted a restraint on their freedom tantamount to a formal arrest. We hold that it did not. In a previous airport-search case involving questioning in a private office, we concluded that appellant's voluntary presence in the office did not convert an otherwise lawful Terry stop into an arrest. United States v. Smith, 574 F.2d 882, 886 (6th Cir. 1978). We also noted that "[s]ome element of official coercion" would be necessary to transform such a scenario

into the equivalent of an arrest. Id. at 886 n. 15.

In Royer, the Court clearly found the following factors, in combination, persuasive:

1) questioning in a separate airport office;
2) retention of the defendant's ticket and identification;
3) retrieval of defendant's luggage by the DEA without his consent; and
4) failure to inform defendant he was free to leave.

These particular facts were determinative of the Court's conclusion that Royer was involuntarily confined under circumstances tantamount to arrest and that, the detention having exceeded the limits of an investigative stop, any

"consent" to the search of his luggage was invalid.

The sole corresponding factor in the case at bar is the fact that defendants' questioning took place in the airport security office. There is no evidence in the record showing that any of the defendants' tickets were retained by the agents. Further, their bags were retrieved with the agents' assistance at the defendants' request. While Agent Holmes did not specifically inform them that they were "free to leave," he did tell them they were not under arrest. And we attach no significance to the fact that defendants were placed in separate rooms for questioning. When two or more individuals are suspected of illegal activity, it is obvious that questioning them together may result in each suspect backing up the story given

by the others. Separate questioning often will reveal inconsistencies in suspects' answers which may lead either to probable cause to arrest or to a subsequent search revealing contraband. See, e.g., United States v. Poitier, 818 F.2d 679 (8th Cir. 1987)(inconsistent answers given during separate consensual questioning provided reasonable suspicion for Terry stop); United States v. Nembhard, 676 F. 2d 193 (6th Cir. 1982) (curbside questioning, in combination with separate questioning in airport office, gave rise to probable cause). But cf., United States v. Ceballos, 812 F.2d 42 (2d Cir. 1987).

Following the dictates of the Supreme Court, we reject, as the sole criterion for the attachment of Miranda rights, reliance on the concept of an "inherently

coercive environment." And since the record before us is devoid of any evidence of official coercion, there is no basis for suppressing defendants' voluntary responses to the agent's questioning.

D. The Abandonment Issue

Defendants assert that the district court improperly found that none of them possessed standing to challenge the search of the blue travel bag. Champegnie further asserts that, since there is no evidence that he had abandoned his briefcase, the cocaine handbook found within should have been suppressed. We hold that none of the defendants had standing to challenge the admissibility of the cocaine found in the blue travel bag since none of them exhibited a legitimate expectation of

privacy in the bag at the time of the search. Katz v. United States, 389 U.S. 347 (1967). A legitimate expectation of privacy incorporates two elements: first, whether the defendant "exhibited-an actual (subjective) expectation of privacy," and, second, whether the defendant's subjective expectation is "one that society is prepared to recognize as reasonable." United States v. Tolbert, 692 (f.2d 1041, 1044 (6th Cir. 1982), cert, denied, 464 U.S. 933 (1983) (quoting Katz). Fourth Amendment rights are personal and may not be asserted vicariously. Rakas v. Illinois, 439 U.S. 128, 133 (1978). "[D]efendants charged with crimes of possession may only claim the benefits of the exclusionary rule if their own Fourth Amendment rights have been violated."

United States v. Salvucci, 448 U.S. 83, 85 (1980). When a defendant is aggrieved by an allegedly illegal search of a third party's property, the Fourth Amendment rights of that defendant have not been infringed. Rakas, 439 U.S. at 134. See also United States v. Calandrella, 605 F.2d 236, 242 (6th Cir.), cert. denied sub nom. Kaye v. United States, 444 U.S. 991 (1979).

In United States v. Tolbert, this court found that when the defendant had specifically disclaimed ownership in a piece of luggage in which drugs were later discovered, the defendant had not exhibited an actual expectation of privacy in that luggage. "One who disclaims any interest in luggage thereby disclaims any concern about whether or not the contents of the luggage remain

private." Tolbert, 692 F.2d at 1045 (quoting United States v. Miller, 589 F.2d 1117, 1131 (1st Cir. 1978), cert. denied, 440 U.S. 958 (1979)). This Court held that since the defendant had affirmatively indicated that she had no interest in the luggage, she had no expectation of privacy as to the contents; therefore, her Fourth Amendment rights were not violated by the search of the luggage. Tolbert, 692 F.2d at 1045. Appellants Knox and Ware both specifically disclaimed ownership in the blue travel bag. The trial court, citing Tolbert, properly found that this disclaimer constituted an abandonment that resulted in appellants' lack of standing to challenge the search.[4]

---

[4]Because we find that Knox and Ware abandoned the travel bag, we do not

Appellant Champegnie clearly did not establish or even attempt to establish any expectation of privacy in the bag since he never had possession nor did he ever claim any interest in the bag. Champegnie's lack of standing to contest the search is firmly within the Rakas rule that the Fourth Amendment rights of an individual who claims to be aggrieved by the search of a third person's pro-

---

reach their argument that any consent given by them to search their bags was vitiated by virtue of their prior illegal detention. In any event, having found that the government did not exceed the permissible bounds of investigation in this Terry-type stop, this argument must fail. In Royer, the Court stated that a defendant's voluntary consent to search given while justifiably detained on a reasonable suspicion permits the introduction of any resulting evidence at a subsequent trial. 460 U.S. at 502. We would point out that, under Royer, the positive reaction of the Narcotics Unit dog alone would have established probable cause to not only search defendants' luggage, but to arrest them immediately.

perty have not been violated. Rakas, 439 U.S. at 134. Therefore, Champegnie may not challenge the search.

Finally, defendant Champegnie suggests that, because the government did not contest his standing to challenge the search of the briefcase, its contents (including the copy of The Cocaine Handbook) should automatically have been suppressed. Although it appears that Champegnie acknowledged ownership of the briefcase, and therefore would have standing to contest its search, he alleges no facts in support of his assertion that his written consent was coerced. Having found that his detention and questioning did not exceed the bounds of a permissible investigatory stop and that Champegnie's cooperation therein was voluntary, we conclude that his

written consent to the search of the search of the breafcase nullifies any claim he now makes regarding its validity.[5]

E. Sufficiency of the Evidence as to Defendant Champegnie

We turn now to defendant Champegnie's contention that the evidence was insufficient to sustain his conviction for aiding and abetting in the possession of a controlled substance. 18 U.S. §2. This court has repeatedly stated that when a defendant challenges the suf-

---

[5]As this court recently noted in United States v. Williams, a similar airport drug search case, a defendant in such circumstances may believe that his "best bet [is] to appear to consent [to the search] and then make a contrary claim at a later suppression hearing." 754 F.2d 672, 676 (6th Cir. 1985). It appears to the court that Champegnie is attempting just such a strategem.

ficiency of the evidence, "[a]ny inferences that are to be drawn must be made in the light most favorable to the government." United States v. Winston, 687 F.2d 832, 834 (6th Cir. 1982)(citing Glasser v. United States, 315 U.S. 60, 80 (1942)). To be found guilty of the crime of aiding and abetting a criminal venture, a defendant must associate himself with the venture in a manner whereby he participates in it as something that he wishes to bring about and seeks by his acts to make succeed. Winston, 687 F.2d at 834. We defined the test in reviewing sufficiency of the evidence claims as deciding "whether a reasonable mind might find guilt beyond a reasonable doubt." Id.

We have no trouble concluding that reasonable jurors could find that Champegnie acted with the specific

intent to facilitate the possession and/or distribution of cocaine. His possession of The Cocaine Handbook is entitled to be considered for whatever inferences it may raise as to Champegnie's involvement and/or interest in illegal drugs. The book contains a section entitled "Health Risk" that suggests that cocaine is not addictive in the same manner as drugs such as heroin, as well as a section covering "Testing for Purity." The book conceivably constitutes a useful reference for those dealing in drugs. The book was found in Champegnie's briefcase, his only piece of luggage. He was also traveling under the name of A. Stanford, which constituted a deliberate misrepresentation of his identity. In addition, he initially refused to acknowledge that he knew either Knox or

Ware, despite that fact that he was observed talking to them at both the Atlanta and Memphis airports and his reservation was made at the same time as theirs. When questioned further, he twice changed his story by stating that he met them on the plane and later stating that he had known them a few months.

Jurors as fact finders are entitled to make common sense conclusions regarding human behavior. Cortez, 449 U.S. at 418. The jury could reasonably conclude from the foregoing circumstantial evidence that Champegnie had purposefully attempted to disassociate himself from Knox and Ware in the event of detection. Therefore, the decision of the district court with respect to all the foregoing issues is AFFIRMED.

JONES, Circuit Judge, concurring. I join in the judgment of Judge Guy affirming the district court's judgments of conviction as to all three defendants. However, there is more to be said since defendants also challenge, under the fifth amendment, the district court's unexplained denial of their motion to suppress statements made prior to the receipt of Miranda warnings. While I ultimately am compelled to conclude that no fifth amendment Miranda violation is established because the guiding legal principles in this area are cloudy, I write separately.

In Miranda v. Arizona, 384 U.S. 436 (1966), the Supreme Court held that:

> [T]the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the

> defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.

Id. at 444 (footnote omitted). Thus, when deciding whether Miranda warnings were improperly withheld, it must first be determined whether the defendants were subject to "interrogation" while "in custody."

It is clear that the brief questioning to which the defendants were subjected constituted "interrogation" under the plain language of Miranda, as well as the subsequent explication in Rhode Island v. Innis, 446 U.S. 291, 300-01 (1980). The Court explained in Innis that:

> the term "interrogation" under Miranda refers not only to express questioning, but also to any words or actions on the part of th epolice (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.

Id. at 301 (footnotes omitted). The term "incriminating response" was defined as "any response-whether inculpatory or exculpatory-that the prosecution may seek to introduce at trial." Id. at 301 n.5 (emphasis in original). Since the responses elicited from the three defendants in the instant case were inherently contradictory and, therefore, subject to introduction into evidence by the prosecution as proof of both the defendants' guilty states of mind and the officer's justification for continued detention, they were "incriminating responses."

The question whether defendants were "in custody" while they were isolated and detained in the airport security rooms in much more problematic. Referring to the original Miranda standard, one might be hard pressed to argue that defendants were not deprived of their freedom of action in any significant way. Indeed, the factual similarity between the instant case and the Miranda cases is noteworthy - all involved police questioning of suspects while isolated in police rooms without the suspect being warned of his constitutional rights to counsel and against self-incrimination. See 384 U.S. at 445.

Despite the relative simplicity of the Miranda standard for determining whether a person is "in custody," the Supreme Court in a 1983 per curiam summarily reversed a decision of a

California state court and essentially redefined the relevant inquiry:

> Although the circumstances of each case must certainly influence a determination of whether a suspect is in 'custody' for purposes of receiving Miranda protection, the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedmon of movement' of the degree associated with a formal arrest.

California v. Beheler, 463 U.S. 1121, 1125 (1983)(per curiam)(quoting Oregon v. Mathiason, 429 U.S. 492, 495 (1977) (per curiam)). The italicized language could be read to engraft the fourth amendment concept of arrest onto the requirement of custody - a concept that had in some respects been treated as a fifth amendment term of art. This would be all the more unusual since the relevant provisions of the fourth and fifth

amendments are based on different principles; one protects against unreasonable seizures while the other grants an absolute guarantee against compelled self-incrimination. As the Court stated in Fisher v. United States, 425 U.S. 391, 400 (1976), "the Fifth Amendment's strictures, unlike the Fourth's, are not removed by showing reasonableness." Nonetheless, Beheler's amended definition of the term "in custody" has been applied without further discussion in subsequent cases. See, e.g., Berkemer v. McCarty, 468 U.S. 420, 440 (1984); New York v. Quarles, 467 U.S. 649, 655 (1984); Minnesota v. Murphy, 465 U.S. 420, 430-31 (1984).

The real difficulty with this interpretation of the Beheler definition is apparent in the instant case. Investigative detentions conducted in

airport security offices are very controversial from a judicial/constitutional perspective, see. e.g., Florida v. Royer, 460 U.S. 491 (1983), but at the same time they are a highly effective law enforcement tactic. Effectiveness alone, however, does not validate that which is constitutionally invalid. The effectiveness of this tactic is due in no small part to the psychological objectives of isolated, police-dominated interrogation discussed at length in Miranda, 384 U.S. at 448-56. For these reasons, it is safe to say that nonconsensual, investigatory detentions conducted in airport security offices represent the outer limits of legitimate Terry seizures. Terry v. Ohio, 392 U.S. 1 (1967). Still, since a valid Terry seizure is, by definition, not a "full seizure" - a term synonomous with

"arrest" - a person properly seized on reasonable and articulable suspicion for a brief investigatory detention could never be considered "in custody" so long as the scope and duration of the Terry stop do not exceed the underlying justification. This would be true regardless of the fact that, ignoring momentarily the fourth amendment's considerations of the reasonableness of the seizure, the nonconsensual detention in a private police room for purposes of interrogation might closely resemble the type of "custody" the Miranda court had in mind.

I recognize that this theory of the impact of Beheler on airport Terry stops is arguably supported by certain dicta in the Berkemer opinion. In that case, the Supreme Court analogized the non-custodial nature of an ordinary traffic

stop to Terry stops. After outlining the constitutional rationale for allowing Terry seizures on less than probable cause, the Court stated:

> [T]his means that the officer may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions. But the detainee is not obligated to respond. And, unless the detainee's answers provide the officer with probable cause to arrest him, he must then be released. The comparatively nonthreatening character of detentions of this sort explains the absence of any suggestion in our opinions that Terry stops are subject to the dictates of Miranda.

Berkemer, 468 U.S. at 439-40 (footnotes omitted).[1] Nevertheless, the Court

---

[1]Of course, it must be observed that the detainee is not necessarily told that he need not respond to the officer's questions, and also need not be aware of the strict limitations on the scope and

declined to announce any new bright line rule tying a determination of fifth amendment custodial interrogation to any particular fourth amendment situation. Id. at 441. Instead, it reaffirmed the case-by-case approach: "fidelity to the doctrine announced in Miranda requires that it be enforced strictly, but only in those types of situations in which the concerns that powered the decision are implicated." Id.. at 437. I likewise am unable to recognize such a bright line rule in this case.

---

duration of the investigatory detention. If suspects were not routinely ignorant of their rights in this regard, the investigatory detention arguably would be a much less effective tool. The only thing a reasonable person subjected to a Terry seizure must know is that he is not free to leave. This knowledge could certainly exacerbate the coercive atmosphere of the interrogation.

Further, I reject the argument that, in view of Beheler, custodial interrogation can never be found in a setting that, under a pure fourth amendment analysis, is a valid investigatory detention based upon reasonable and articulable suspicion. See United States v. Streifel, 781 F.2d 953 958 (1st Cir. 1986) (suggesting that it is only a general rule that Terry stops do not implicate Miranda). If it is true that custodial interrogations and brief investigatory detentions are mutually exclusive, it is because the Supreme Court has held that "detention for custodial interrogation - regardless of its label - intrudes so severely on interests protected by the fourth amendment as necessarily to trigger the traditional safeguards against illegal

arrest." Dunaway v. New York, 442 U.S. 200, 216 (1979). See also United States vs Manbeck, 744 F.2d 360, 379 n.30 (4th Cir. 1984), cert. denied, 469 U.S. 1217 (1985). Accordingly, it is not impossible for investigative Terry stops to degenerate into custodial interrogation requiring Miranda warnings. But when they do, the holding of Dunaway requires that the seizure be justified by full probable cause as opposed to mere reasonable suspicion.[2]

---

[2]If it comes to pass that law enforcement officers have difficulty understanding and applying this rule, it must be recognized that the uncertainty is due to the recent, unchecked expansion of the scope of permissible investigatory detentions under the Terry doctrine rather than any modification of the applicability of Miranda safeguards to custodial interrogation. As the Berkemer opinion made clear, ease of application alone cannot outweigh the individual's constitutional privilege against coerced

Turning to the application of these principles to the case at bar, two questions must be addressed: (1) were defendants interrogated without the benefit of Miranda warnings while "in custody"; and, if not, (2) were their statements nonetheless involuntary? It should be observed that such an inquiry would have been assisted by specific findings of fact in the district court, but the existing record and the sub silentio denial of the motion to suppress provide a sufficient basis upon which to proceed. Notably, the defendants' failure to testify at the suppression hearing leaves Agent Holmes' version of the encounter uncontradicted

---

self-incrimination and the need for prophylactic warnings to secure that privilege.

and, perhaps not surprisingly, his testimony does not suggest that the defendants' statements were coerced in any way.

Although the defendants were technically seized at the time of their questioning in the airport security rooms, the record and recent Supreme Court decisions allow but one conclusion- that they went from the public concourse to the security rooms "voluntarily." The conclusion that the defendants were seized is another way of saying that defendants defendants reasonably realized that they were not free to leave the premises. Nonetheless, it does not necessarily follow that the defendants reasonably perceived that they were confined to the security rooms. Thus, I do not find the uncon-

tested facts of this case to be materially distinguishable from those of Oregon v. Mathiason, 429 U.S. 492 (1977) (per curiam) and United States v. Harris, 611 F.2d 170 (6th Cir. 1979). See also Beheler, 463 U.S. at 1124 n.2; Sevier v. Turner, 742 F.2d 262 268 (6th Cir. 1984) ("the mere location of an interview and the fact that an investigation has focused upon a particular person, without more, will not support a finding of custody"). Under these holdings, the defendants were not in custody at the time of the interrogationin question and Miranda warnings were not required. As an intermediate appellate court we are bound to follow those holdings, even if they raise serious questions.

Even if Miranda warnings were not required, a finding that the statements

were involuntarily made or coerced in violation of the fifth amendment would require their suppression. However, viewing the totality of the circumstances as set forth in the record, I find insufficient evidence to support such a conclusion and therefore I concur in the judgment of the majority.

EDWARDS, Senior Circuit Judge, dissenting. As I see this case, the significant question is: where three airplane passengers are stopped by federal officers and led into separate airport offices wherein each is questioned about possession of cocaine found in the luggage of one of them and each separately makes statements which are subsequently used to convict him or her of illegal possession of

cocaine,[1] does Miranda v. Arizona require reversal of said convictions since concededly no Miranda warnings were given until after statements had been secured?

I would answer this question in the affirmative.

This case was tried before the District Court for the Western District of Tennessee. The defendants now appeal their convictions for possession of cocaine with intent to distribute. The facts herein clearly allowed the District Court to find that defendants

---

[1]Appellant Dorothy Ann Knox submitted a Conditional Plea of Guilty which, however, "specifically reserves...all appeal rights as to all issues raised in defendant's Motion to Suppress..." The practical effect of this Plea is to place her before this court in the same position as the other two defendants and I treat all three jointly in this opinion.

were in possession of cocaine with intent to distribute and were caught in such possession. That, however, does not end this argument.

On June 14, 1985, Memphis Drug Enforcement Administration (DEA) Agent Richard Holmes received a telephone call from DEA Agent Paul markonni, who was assigned to the airport detail in Atlanta, Georgia. Agent Markonni advised Agent Holmes that he had observed one male and two females (later identified as the three defendants) at the Atlanta Airport when they exited a plane arriving from Miami, Florida. Agent Markonni reported that he noticed one of the females (Ware) holding one of her arms across her abdomen, as if she were holding something, and rush to an airport restroom. When Ware returned